

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**WOODROW FLEMMING,**

**Plaintiff,**

**-v-**

**9:06-CV-562 (NAM/DRH)**

**GLEN GOORD, Commissioner; DONALD SELSKY,**  
**Director of Special Housing; MICHAEL MAHER, Deputy**  
**Acting Superintendent; CAPTAIN DAUPHIN; LT.**  
**MITCHELL; LOZADA ROSSY; ANDY MEACHEM,**  
**Security Officer; and SGT. H. FITZPATRICK, Security Sgt.,**

**Defendants.**

\*\*\*\*\*  
APPEARANCES:

WOODROW FLEMMING  
03-A-5259  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, NY 12953  
Plaintiff *Pro Se*

HON. ANDREW M. CUOMO, Attorney General for the State of New York  
DAVID L. COCHRAN, Esq., Assistant Attorney General  
The Capitol  
Albany, New York 12224-0341  
Attorney for Defendants

**Hon. Norman A. Mordue, Chief U.S. District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff, an inmate in the custody of the New York State Department of Correctional Services, brought this action under 42 U.S.C. § 1983. Presently before the Court is plaintiff's motion for summary judgment (Dkt. No. 47). The motion was referred to United States Magistrate Judge David R. Homer pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c). In a Report and Recommendation (Dkt. No. 66), Magistrate Judge Homer recommends that the motion be

denied.

Within the time allocated for objections to the Report and Recommendation, plaintiff submitted a handwritten document (Dkt. No. 67) stating that he “will not oppose” the Report and Recommendation and requesting a discovery order. Plaintiff’s decision not to object to the Report and Recommendation waives further judicial review of the matters therein. *See Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993). Moreover, this Court agrees with Magistrate Judge Homer’s recitation of the facts and law and his recommended disposition of the motion.

### **PRETRIAL SCHEDULING ORDER**

In order to expedite the disposition of this action and to discourage wasteful pretrial activities, the Court directs that the attorneys or parties, if appearing *pro se*, comply with the following procedures.

#### **I. NON-DISPOSITIVE MOTION FILING DEADLINE**

The deadline for the filing of non-dispositive motions (excluding motions to compel, discussed below) is **November 30, 2008**. **"Non-dispositive" motions include, but are not limited to, requests to: (i) join any person as a party to this action and (ii) amend a party's pleading.**

#### **II. DISCOVERY**

All discovery is to be completed by **March 30, 2009**. Service of discovery requests must be made a sufficient number of days before this deadline to allow responses to be served before the cut-off. Please refer to Local Rule 16.2 (Discovery Cut-Off ). The parties are to respond **promptly** to discovery requests and otherwise comply with Rules 26 through 37 of the Federal Rules of Civil Procedure. If a party fails to fully respond to discovery, the requesting party must make good faith

efforts to resolve the differences either by telephone conference or by mail. The defaulting or objecting party has the same obligation to make good faith efforts to resolve discovery disputes and shall promptly answer requests so as not to delay discovery. *See* Local Rule 7.1(d).

If plaintiff intends to claim damages for **physical or mental injuries** at trial, plaintiff must notify defendant(s) in writing of the name and address of any doctor or mental health care provider plaintiff intends to call at trial and state in writing what that witness will say about plaintiff's physical or mental condition. **Failure to follow this rule will result in the loss of any right plaintiff may have to call such witness(es) at trial which may result in loss of plaintiff's ability to prove damages.**

### III. MOTIONS TO COMPEL

If discovery disputes cannot be resolved by the efforts of the parties, a motion may be brought pursuant to Fed. R. Civ. Proc. 37(a) and filed by **April 30, 2009**.

**No motion to compel discovery shall be filed unless (a) the party has made good faith efforts to resolve the issues in dispute as directed in L.R. 7.1(d) and (b) the related discovery materials accompany the motion to compel. ANY MOTIONS NOT ACCOMPANIED BY DOCUMENTATION SHOWING THAT PARTY'S EFFORTS TO RESOLVE ANY DISCOVERY DISPUTES PRIOR TO FILING A MOTION TO COMPEL WILL BE DENIED FOR FAILURE TO COMPLY WITH THIS LOCAL RULE.**

### IV. DISPOSITIVE MOTIONS

All dispositive motions, such as motions seeking summary judgment, shall be filed no later than **May 30, 2009**.

### V. PROCEDURE FOR FILING ANY MOTION

All motions shall be served at least 31 days prior to the return date. Answering affidavits and opposition memoranda shall be filed and served no later than 17 days prior to the return date. All motions will be heard on submission without oral argument unless otherwise ordered by the Court. **MOTIONS THAT ARE NOT TIMELY FILED IN ACCORDANCE WITH THESE DEADLINES WILL BE DENIED AS UNTIMELY.**

VI. EXTENSIONS

The above deadlines will not be extended by the Court except upon application to the Court with a showing of good cause.

VII. CONSENT

If a party chooses to have all further proceedings in this matter conducted by a U.S. Magistrate Judge, the party or the party's attorney should sign the attached consent form and mail it to the Clerk. If all parties consent and the assigned District Judge concurs, all further proceedings including the trial will be conducted by a Magistrate Judge. 28 U.S.C. § 636(c).

**WHEREFORE**, it is hereby

**ORDERED** that the Report and Recommendation (Dkt. No. 66) of United States Magistrate Judge David R. Homer is accepted and adopted in its entirety; and it is further

**ORDERED** that plaintiff's motion (Dkt. No. 47) for summary judgment is denied without prejudice; and it is further

**ORDERED**, that the parties comply with this Pretrial Scheduling Order.

Dated: September 22, 2008  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge

**NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE  
TO EXERCISE OF JURISDICTION**

In accordance with the provisions of 28 U.S.C. Section 636(c), you are hereby notified that a United States Magistrate Judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or non-jury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

Your opportunity to have your case disposed of by a magistrate judge is subject to the calendar requirements of the court. Accordingly, the district judge to whom your case is assigned must approve the reference of the case to a magistrate judge for disposition.

In accordance with 28 U.S.C. § 636(c), an appeal from a judgment entered by a magistrate judge will be taken to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a District Court.

Copies of the consent form are available from the Clerk of the Court.

**\*\*ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM\*\***

**WOODROW FLEMMING,,**

Plaintiff,

vs.

**CONSENT TO JURISDICTION BY  
A UNITED STATES MAGISTRATE  
JUDGE AND ORDER OF REFERENCE****GLEN GOORD, Commissioner;  
DONALD SELSKY, Director of Special  
Housing; MICHAEL MAHER, Deputy  
Acting Superintendent; CAPTAIN  
DAUPHIN; LT. MITCHELL; LOZADA  
ROSSY; ANDY MEACHEM, Security  
Officer; and SGT. H. FITZPATRICK,  
Security Sgt.,**

Defendants.

9:06-CV-562 (NAM)

**CONSENT TO EXERCISE OF JURISDICTION  
BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. Section 636(c), and Fed.R.Civ.P. 73, the undersigned party or parties to the above captioned civil matter hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment. Any appeal to the final judgment will be taken directly to the Court of Appeals for the Second Circuit.

SignaturesParty(ies) RepresentedDate

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(ATTACH ADDITIONAL SIGNATURE PAGE IF NECESSARY)

**ORDER OF REFERENCE**

**IT IS HEREBY ORDERED** that the above captioned matter be referred to the Honorable \_\_\_\_\_, United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. Section 636(c), and the consent of the parties.

\_\_\_\_\_  
Date\_\_\_\_\_  
United States District Judge**Note - RETURN THIS FORM TO THE CLERK**